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The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Dingell:

As President of the Alabama Public Service Commission ("APSC"), and Second Vice President of the National Association of Regulatory Utility Commissioners ("NARUC"), I appreciate the opportunity to respond to the questions posed in your letter dated April 10, 1997. Many issues and concerns have arisen in the context of the debate over restructuring the electric utility industry, and your inquiry touches on a number of those matters. Your assessment that this is a complex policy area is correct, and any governmental body considering such restructuring must proceed carefully and act only after a thoughtful and thorough examination and understanding of all the relevant issues.

Although a sincere attempt has been made to respond fully and fairly to the questions posed, a few caveats must be raised. The APSC is a three-member body that operates within a defined statutory framework, and therefore these responses do not represent the official views and positions of the Commission, nor are they official NARUC positions. Any effort to identify and address potential restructuring issues and concerns are heavily dependent on the particular facts and circumstances in a given State. While I routinely receive information regarding such matters and am obviously familiar with the jurisdictional electric utility that provides service in Alabama (Alabama Power Company), there may be perspectives or facts that were not fully considered in the development of these responses. Consequently, the views I express are preliminary in nature and are subject to modification depending on future developments, arguments and factual analyses.

1. Has your Commission or State legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?

No retail competition legislation has been adopted in Alabama. Although a retail access bill was introduced in the state legislature last year, it received very little support. Nonetheless, Alabama law already allows competition for new customers having a load of 2500 kW or more. Ala. Code §§ 37-14-3, 37-14-32. In this regard, our jurisdictional utility has been able to compete successfully for such new loads. The fact that our regulated rates are competitive when compared to nonregulated rates demonstrates that regulation in Alabama has been successful and is producing low-cost (and hence competitive) rates.

Although not specifically contemplating restructuring, the Alabama legislature has enacted a statute that would provide for the possibility of stranded cost recovery via an exit fee, in certain instances. Ala. Code § 37-4-30 (hereinafter referred to as "S.306"). That statute is currently being challenged in federal district court. American Energy Solutions v. Alabama Power Co., Case No. 97-D-96-N (M.D. Ala.).

When evaluating the claims of those who promise that residential ratepayers would benefit from federally mandated retail competition, one should consider the residential rate impact of the Telecommunications Act of 1996. In enacting that legislation, Congress lauded the free-market benefits (i.e., lower rates) that would be provided to customers. As evidenced by a recent article in The New York Times, however, the reverse may be occurring -- rates (especially for residential and rural customers) may actually increase as the Federal Communications Commission attempts to address the difficult issues of universal service and subsidies. Mark Landler, "Rising Phone Bills are a Likely Result of Deregulation," N.Y. Times, March 30, 1997. To avoid a similar outcome in the electric industry, each State must be given the right to decide whether, when and how to implement retail competition.

2. Has your State asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist in adopting retail competition? Has it requested or recommended any other type of Congressional action?

Alabama has neither asked Congress to mandate retail competition nor sought Congressional action to enable or assist in this regard. In my view, Congress should not undertake to mandate retail competition, either through a "date certain" approach or through a "one size fits all" approach. I am a strong supporter of the position of the NARUC, and helped craft their Principles to Guide the Restructuring of the Electric Industry, adopted at the NARUC Summer Committee Meetings, July 1996. These Principles would allow each State freedom to decide whether, when and to what extent it wishes to engage in retail restructuring based upon a myriad of State-specific factors that the State is uniquely equipped to consider. Based on the longstanding notion that regulation of utilities is designed to ensure economic efficiency and protect and safeguard the public interest, structural change should only be encouraged for Alabamians if it results in improved efficiency and serves a broader public interest. If Congress is to enact such legislation, however, it should (at a minimum) first allow the different State experiments with retail competition to proceed sufficiently to determine whether the promised benefits of retail competition actually develop and, if so, whether the benefits exceed the associated costs and disruptions.

As you are undoubtedly aware, there is a substantial difference in the degree of restructuring activity among the various States. It seems clear, however, that there is a direct correlation between the degree of such activity and the price of electricity in a particular State. Indeed, the States that are in the process of implementing retail access have some of the highest electric rates in the country. In sharp contrast, our jurisdictional electric utility has average retail electric rates among the lowest in the nation, and its average retail price is 16 percent below the national average.[1] Moreover, some observers believe that nationwide retail competition would eventually produce regional (if not national) pricing equilibrium, with prices decreasing in high-cost States but rising in low-cost States. If that actually occurred, Alabama would clearly be a "loser" because market forces could siphon away the low-cost power currently provided to Alabama ratepayers.[2] The APSC has long endeavored to keep electric retail rates low, and is opposed to initiatives that would frustrate that goal.

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[1] According to Regulatory Research Associates, Inc.'s Focus Notes of May 29 and June 4, 1996, reporting the ranking of the 121 largest investor-owned operating companies average industrial, commercial and residential price per Kwh.

During the past 10 years, Alabama Power's average retail price has decreased by more than 8 percent. Over that same period, national electricity prices have risen 20 percent and the Consumer Price Index ("CPI") has climbed more than 40 percent. See the response to Question #8.

[2] The low retail rates paid by Alabama ratepayers are attributable to a number of factors, including regional characteristics (such as natural resources, demographics, etc.), efficient utility management and effective regulatory oversight. The benefits resulting from these and other such factors properly belong to the people of Alabama, and should not be usurped for other States through Congressional action. This is particularly the case when, at least in some instances, the high retail rates that are prompting the move to retail competition in other areas are the product of earlier State regulatory decisions (societal, environmental, or otherwise) that have now proven uneconomic and wasteful.

3. Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain? If not, what timing and other problems might ensue? What could Congress do to address any such problems?

While Alabama has enacted legislation (S.306) that would provide the opportunity for some retail stranded cost recovery, it is difficult in the abstract to determine whether the APSC possesses sufficient authority to adequately provide for stranded cost recovery in the event of full retail competition. S.306 was intended to close a regulatory gap that developed under the current regulatory framework in Alabama. (See Coastal States Gas Transmission Co. v. APSC, 524 So. 2d 357 (Ala. 1988)). This legislation has been challenged on federal constitutional and statutory grounds and on state constitutional grounds and is waiting review by the federal district court. American Energy Solutions v. Alabama Power Co., Case No. 97-D-96-N (M.D. Ala.).

Even though S.306 was prompted by the Coastal States decision, the stranded cost recovery mechanism in the statute could be broad enough to encompass stranded costs, no matter how they arise. Such an application has obviously not been tried, however, and would almost certainly be challenged in court. At this juncture, it would be speculative to predict the outcome of any such challenge. Indeed, this would be only one of many, arguably larger, problems that would be triggered if Congress were to require retail access. Simply put, the Alabama Legislature would have to dismantle and rebuild the entire regulatory scheme pursuant to an entirely different set of parameters. At a minimum, a public utility's duty to provide universal service would have to be reconsidered, and the government sanctioned inequities between competing electric suppliers would have to be addressed. These and other such difficult issues could not be resolved in a hurried fashion, but instead would require a significant investment of time, effort and careful thought.

4. Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?

An immediate repeal of PURPA would pose no particular problem for the State of Alabama. Indeed, the rate woes in a number of other States appear to be due, in part, to expensive PURPA contracts that extend far into the future. Fortunately, PURPA has not been a major factor in Alabama because our jurisdictional utility's low avoided costs, coupled with effective regulation, have created little incentive to build QF's.

While PUHCA has unquestionably played an important historical role, that statute, given retail customer choice, could cause unnecessary inefficiencies by subjecting only one segment of the market (holding companies) to additional regulatory restrictions. These inefficiencies will become even more pronounced as additional competitive elements are introduced into the electric industry. With mandatory retail customer choice, a repeal of PUHCA would not impair effective retail regulation so long as the States are given sufficient financial data to monitor parent company activities. Indeed, the different State commissions are better situated to provide the requisite flexibility needed to effectively regulate affiliate transactions in the context of increased competition.

While effective regulation could be maintained in PUHCA's absence, the one aspect of PUHCA that possibly should be retained is the SEC's regulation over the diversified activities of large holding companies. Such continued SEC jurisdiction is arguably necessary to ensure that holding companies' diversified activities do not subsidize or endanger their core businesses. Moreover, State commissions generally lack jurisdiction over a holding companies' unregulated activities. In any case, it would be more appropriate for any discussion of repeal or reform of PUHCA or PURPA to take place in the broader context of discussions on comprehensive legislation to restructure the electric utility industry.

5. Would any constitutional issues be raised by federal legislation:

a. mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?

b. requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in the consumers' best interests?

a. In my view, it would be wrong for Congress to force the States to choose between either adopting retail competition by a date certain or having retail competition imposed on them by a federal agency. Such an approach would most definitely raise serious constitutional questions, including whether Congress would have exceeded its authority under the Commerce Clause and whether the Tenth Amendment would prohibit such federal intrusion into an area traditionally reserved for the States. The Supreme Court's reasoning in New York v. United States, 505 U.S. ___, 102 L.Ed 2d 120 (1992) would be particularly relevant to the Tenth Amendment claim. In that case, the Court held that a statute requiring States to either take title to low-level radioactive waste or regulate pursuant to Congressional directives violated the Tenth Amendment because both of the choices were independently unconstitutionally coercive. The Court began its analysis as follows:

> Congress may not simply commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.

120 L.Ed 2d at 140 (citations omitted). The Court later acknowledged the concept of "cooperative federalism", but suggested that this concept would not save federal legislation that resulted in a "State [having to] abandon the field if it does not accede to federal direction." 120 L.Ed 2d at 149. Relevant in this regard is the dissenting opinion in Mississippi v. FERC by Justice O'Connor (the author of the majority opinion in New York), who declared:

> [T]here is nothing 'cooperative' about a federal program that compels state agencies either to function as bureaucratic puppets of the Federal Government or to abandon regulation of an entire field traditionally reserved to state authority.

456 U.S. 742, 783 (1982)(J. O'Connor, dissenting). The choice contemplated under option (a) above would fail this test because the States would be forced to choose between regulating pursuant to Congressional directives or completely abandoning the regulation of retail electric rates -- a field traditionally left to the States.

b. This option obviously raises fewer constitutional issues than option (a) above, and could perhaps be defended under the Supreme Court's holding in Mississippi v. FERC. In that case, the Court upheld (among other things) PURPA's requirement that State commissions must "consider" adopting certain congressionally proposed rate designs and standards for utility service. Critical to the constitutional analysis is the fact that the States were expressly given the right to decline to adopt the federal standards so long as certain procedural guidelines were followed. An obvious question, however, is why such a statute would be necessary in this instance since each State is clearly aware of the retail access debate and is free to pursue that option if it determines such to be the best interests of its citizens.

6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?

It is assumed that this question refers to a hypothetical legislative enactment that disavows any decisions (either by the State commission or by the electric utility) made pursuant to the "regulatory compact" that existed under the prior regulatory structure. In such an instance, it should be expected that regulated utilities would argue that a statute that denied them recovery of the costs and/or expenses resulting from such decisions would constitute an impermissible taking of property in violation of the Fifth and Fourteenth Amendments. In United States v. Winstar, 116 S.Ct. 2432 (1996), the United States Supreme Court strongly implied that congressional alteration of a regulatory scheme may give rise to due process claims by regulated companies who have made investments in reliance on the prior system.

Retail competition legislation that neither grandfathered prior state action nor provided for recovery of stranded costs could also have dire consequences with respect to the continued operation and decommissioning of nuclear plants. The NRC has recognized in an Advanced Notice of Proposed Rulemaking that federal electric restructuring legislation requiring generation to be sold at market prices may affect the ability of some nuclear utilities to fund decommissioning requirements, thus creating a financial risk to taxpayers. 61 Fed. Reg. 15427. If legislation fails to provide for a continual funding for decommissioning of nuclear units, the decommissioning costs for plants forced by market economics to shut down prematurely would have to be reallocated. A similar situation exists with regard to the nation's program for the disposal of high level radioactive waste, which is also funded by the operation of nuclear units. Although Alabama Power's nuclear units are among the safest and most efficient in the country, the cost of operating these units (which constitute approximately 18 percent of Alabama Power's generating capacity) could increase if the waste disposal costs of shutdown units are reallocated to those still operating. The environmental and economic effects of such a situation could have serious consequences for Alabama consumers.

When considering any legislation that would restructure the electric utility industry, the potentially disastrous effect on the State and local tax base must also be considered. This is because many of the taxing schemes focus on existing regulated suppliers -- suppliers that could be displaced in a competitive market by out-of-state suppliers or in-state, non-regulated suppliers. In Alabama, the collection of the following taxes could be adversely affected: a) State and local ad valorem taxes; b) the 2.2 percent State public utility license tax; c) the 3 percent municipal public utility license tax; and d) the 4 percent utility gross receipts/service use tax. In addition, such legislation could conflict with a host of existing State laws, policies and programs, such as those involving universal and non-discriminatory service, service reliability, energy assistance to low-income customers, economic development incentives and energy conservation measures.

7. In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and the incidence of such rate reductions is on the increase.

a) Are you aware of any study or analysis relevant to your State that supports this conclusion?

b) Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized one another, and whether or not this trend has altered in recent years.

a) No. Federally-mandated retail competition could easily produce the opposite result. Although no study or analysis has been conducted in this regard, I would be very concerned that under retail competition large industrial customers would benefit at the expense of small business and residential customers. This is because the smaller customers are typically more costly to serve (and hence would be less attractive to the competing suppliers). Putting aside any such cost-of-service differences, these smaller customers could lack the resources and bargaining power to negotiate favorable arrangements in a manner similar to the larger customers. Furthermore, such legislation would nullify the carefully crafted protections that the APSC has enacted to protect residential customers and to address the issue of rate subsidies.

In 1995, the APSC approved the Class Return Equalization Adjustment Rate ("Rate CREA") that was proposed by Alabama Power to promote rate parity (and thus avoid a rate subsidy) between its residential and non-residential customers. Rate CREA had its origins in a review of Alabama Power's 1994 Cost of Service Study, which showed that the revenues derived from Alabama Power's non-residential customers were supporting a higher return on investment than were its residential customers. In Re: Acceptance of Class Return Equalization Adjustment Rate and Interim Step Toward Rate Parity; and Adoption of Moratorium on Increases Under Rate RSE, at 2 (APSC 1995) ("Rate CREA Order"). Recognizing that this disparity could lead to those larger customers seeking alternative suppliers (and thereby create stranded costs that would have to be recovered through higher residential rates), the APSC approved Rate CREA to be effective in 1999. If Alabama Power's annual cost of service study shows that the return from the residential class is below parity, then a rate adjustment will be made of no less that one percent in the residential class revenue with an opportunity for an additional amount if certain criteria are met.[3] To gradually achieve parity before Rate CREA goes into effect, the APSC also approved a series of rate reductions for all customer classes that essentially result in non-residential rates being reduced more rapidly than residential rates. Rate CREA Order, at 4-5 ("The net effect of all of these interim steps will ensure that the residential class will not be adversely impacted and rates for the average residential customer will remain the same or slightly lower.") Rate CREA is only one example of the many types of programs fashioned by the States to promote the best interests of their jurisdictional electric customers. Federal legislation mandating retail access would almost certainly nullify these carefully crafted protections.

b. See the response to subpart a. above and to Question #8 below.

8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer classes.

Attached is a chart presenting the rate trends for Alabama Power's residential, commercial and industrial customers since 1986. As shown on the chart, the rates for all three classes have decreased in real terms. It should also be noted that those rate decreases have taken place over the same time period in which the CPI - Electricity has risen 22.1 percent and the CPI - All Items has increased 43.5 percent.

9. Some proponents of retail competition hold the view that all electricity resources should be sold at market price and that state authority to regulate retail rates should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In a restructured electric industry, who should receive the benefits of these low-cost resources -- utility ratepayers, utility shareholders or the highest bidder?

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[3] The additional amount is only applicable if the total adjustment percent is less than the increase in the Consumer Price Index ("CPI") for the preceding year and if the real price of electricity has remained the same or decreased from the base calendar year of 1994. Rate CREA Order, at 3-4.

Selling electricity in such an unregulated competitive market could potentially produce a nationwide (or at least regional) pricing equilibrium, with prices decreasing in high-cost States, but rising in low-cost States. Were that to occur, all classes of customers in Alabama could see an increase in the price paid for electricity, with the biggest loser likely being the residential class. See response to Question #7. The jurisdictional utility would be relieved of its traditional obligation to serve and therefore free to sell the output of its lower-cost generation at the higher equilibrium price established by the competitive market.

One mechanism that has been suggested to protect residential customers under retail competition is to require public utilities to dedicate the electric output of their lower-cost generation facilities to local residential customers while competing in the open market with their remaining, higher-cost facilities. On its face, such an arrangement seems to unfairly penalize the traditional public utilities because they would not be able to use their most competitive sources of generation to survive in the competitive market. Instead, those assets would remain subject to regulation, and used to make universal service available to all residential customers. Of course, universal service is a cornerstone of the traditional "regulatory compact" that the move to competition is supposed to supplant. Without prejudging any of these proposals, it would appear that serious conceptual issues will arise if an effort is made to require public utilities (but no other participant) to simultaneously function in a retail arena that is both regulated and unregulated. Perhaps a better course would be to decide from the outset whether open retail competition is, or is not, appropriate. As previously explained, that is a decision that should be made by each State based upon a detailed evaluation of its own unique factors and circumstances.

10. Of those states which have adopted retail competition, how many have addressed the issue of "reciprocity", (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to its retail markets)? Whose interest does a reciprocity requirement affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?

The reciprocity requirement helps to protect local suppliers and their remaining customers from being disadvantaged in the face of direct competition from out-of-state suppliers who are not themselves subject to similar competition in their retail jurisdictions. The problem with a State unilaterally enacting a reciprocity requirement is that it arguably violates the dormant Commerce Clause by impermissible regulation of interstate commerce[4] and could be

[4] Cf. Philadelphia v. New Jersey, 437 U.S. 617 (1978)(State statute that prohibited the importation of certain waste into that State violated the Commerce Clause).

construed as an unlawful attempt to enforce legislation beyond its borders.[5] Nevertheless, reciprocity could be necessary to allow for meaningful retail competition, and therefore Congress should give serious consideration to legislation that would authorize the States to exercise the option to require interstate reciprocity in any restructuring legislation that a State decides to enact. If it is "'expressly' stated and 'unmistakably clear'", such federal legislation would nullify the Commerce Clause problem because Congress can authorize States to take actions that would otherwise violate the dormant Commerce Clause. E.g. Nat. Solid Wastes Manag. v. Alabama Dept. of Envir., 910 F.2d 713, 721 (11th Cir. 1990) (quoting White v. Mass. Council of Constr. Employers, Inc., 460 U.S. 204 (1983)).

11. If Congress were to require "unbundling" of local distribution company services as a part of a retail competition mandate, what practical problems might this present to state regulators?

"Unbundling" of distribution services is generally assumed to contemplate opening to competition the various equipment and services that have heretofore been considered an integral part of local distribution to the retail customer. Meters, meter reading, repair services and billing are some of the examples cited in this context, but the list could be almost endless depending on the level of detail to which a proponent might wish to go. In any event, attempting to unbundle only the most basic of these distribution services would trigger a number of practical problems and issues, including:

a) Inefficient and costly conversions could be required. For instance, universal installation of advanced metering equipment and an expansive fiber optics network might be necessary to transmit the information to the various service providers;

b) Suppliers (including the public utility) may elect not to provide some high overhead services, such as customer service centers;

c) The obligation to restore service following outages could be unclear;

d) Programs previously put in place under State regulation to implement specific policies (such as economic development, environmental protection or low income assistance) might be discarded; and

e) Substantial possibility of customer confusion, particularly if the customer (perhaps unknowingly) has diverse suppliers of different services.

In sum, these and other practical concerns dealing with cost separations suggest that a hard look first be made whether this requirement should be implemented. There are substantial reasons to question whether any perceived benefits would exceed its quantifiable and unquantifiable costs.

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[5] BMW of North America v. Gore, 116 S.Ct. 1589, 1597 (1996) (States are generally prohibited from enacting laws that purport to "impose its own policy on neighboring states").

12. Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?

While the Tennessee Valley Authority ("TVA"), Southeastern Power Administration (SEPA), municipal utilities, and cooperatively- owned utilities all provide electric service in Alabama, Alabama Power is the only electric supplier whose electric rates are subject to APSC review. If retail electric pricing is to be established by open competition, that market must operate fairly and without the tainting effect of artificial competitive advantages. Many contend that TVA receives various financial advantages not available to investor-owned utilities, including: a) an exemption from normal taxation; b) lower cost of capital for investment; and c) preferential access to low-price power generated by federally-owned hydroelectric facilities. One expert has estimated that TVA receives about $1.2 billion annually from these and other subsidies.[6] In addition, TVA's employees are in certain instances immune from tort liability, and TVA receives various regulatory exemptions, including being exempt from FERC's general jurisdiction over wholesale rates.

To the extent such advantages and subsidies were originally granted in an entirely different context, the need to perpetuate them in a competitive retail market should be examined. For example, TVA was originally created to control flooding and promote navigation and agriculture in the Tennessee River Valley, with electric production being an incidental function authorized to avoid the wasting of potential hydroelectric production.

13. How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?

It is far too early to speculate on what changes might be required at the APSC. It is possible that a realignment of duties might be sufficient under a new scheme. One thing is certain: additional funding at most State agencies is never readily available, with Alabama being no exception. The current funding of the APSC is tied to inspection and supervision fees charged the utilities we regulate. If the manner or nature of that regulation changes, there is the likelihood that the method of funding would require major State legislative revision.

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[6] Affidavit of Joseph S. Graves, p. 10, submitted in Alabama Power Company v. Tennessee Valley Authority, 948 F.Supp. 1010 (N.D. Ala. 1996).

14. Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets? What risks are inherent in this approach, and who bears them?

The APSC has not addressed the issue of securitization, and additional enabling legislation would be necessary before it could implement such a program. Indeed, it appears that all securitization plans to date have required State legislative action to provide the requisite assurance of a reliable revenue stream, which is the predicate for this means of financing. Of course, such arrangements are still relatively new, and thus it remains to be seen how such bonds will be perceived by the market from the standpoint of relative riskiness. This is yet another aspect of the current State retail experiments where a few years' actual experience could be instructive. It should be noted, however, that some experts believe that stranded cost securitization plans conflict with the terms of many utilities' mortgage indentures, and thus there may be a threshold risk that a securitization plan could not be implemented in the first instance.

In summary, securitization plans are by no means a cure for the stranded cost issue, but they clearly merit investigation because the lower financing cost can effectively reduce the total cost to consumers. Perhaps more importantly, such plans can allow utilities to weather the initial transition to competition by allowing them to receive stranded cost payments up-front. This would hopefully enable more electric suppliers to remain in the marketplace, which would appear to be a desirable goal for any State that has decided to transition to a fully competitive retail market.

Once again I must add that stranded cost recovery mechanisms and amounts are decisions best left to the States to decide. The amount and nature of stranded costs in any given jurisdiction should determine the nature of the solution, and who better knows these factors than the State regulator.

15. There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.

a. Do you believe PUHCA impedes competition, at the wholesale or retail level? Can "effective competition" be achieved regardless of whether Congress enacts changes to PUHCA?

b. Do you believe Congress should modify or repeal PUHCA? If so, why, and under what if any conditions?

c. Should Congress enact legislation to modify the holding in <u>Ohio Power Co. v. FERC</u>, 954 F.2d 779 (D.C.Cir. 1992)?

a. As discussed in the response to Question #4, PUHCA has played a very important historical role. In the context of evolving competition, however, it imposes counterproductive inefficiency on the market (both retail and wholesale) because some market participants are burdened with additional restrictions that do not apply to others. The continued application of PUHCA would thus mean that true, open competition would not exist. This, in turn, casts doubt on whether "effective competition" could be achieved.

b. A comprehensive review of PUHCA is clearly in order given the issues facing the industry and regulators in the rapidly-changing electric utility environment. At a minimum, it should be modified to: a) delete the "integration" requirement; and b) provide States with flexibility to review affiliated transactions through prudence reviews and complaint proceedings. As I previously stated, any reform or repeal of PUHCA should be considered in light of discussions on comprehensive legislation to revise the Federal Power Act and restructure the electric utility industry through appropriate State processes.

c. Except in unusual circumstances, it is my view that affiliate transactions should be at cost. This standard eliminates any profit motive and has worked well over the years. Coupled with prudence reviews of affiliated transactions by State commissions, it should continue to provide adequate protection for consumers.

I hope that these answers are of assistance in your efforts to develop a sound and rational electric industry restructuring policy. I am available to meet with you at your convenience to discuss these matters more fully, and would welcome such an opportunity. Please do not hesitate to call on me.

Sincerely,

Jim Sullivan

Jim Sullivan
President, Alabama Public Service Commission

Second Vice President, National Association of
Regulatory Utility Commissioners